

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL EVANS,

Plaintiff,

v.

Case No.: 2:19-cv-527-FtM-38NPM

WARDEN, CHARLOTTE CI,
INSPECTOR, CHARLOTTE CI, K.
WILLIAMS and J. DAWSON,

Defendants.

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OPINION AND ORDER¹

Before the Court is Warden Derek Snider's Motion to Quash Service ([Doc. 12](#)) filed August 15, 2019. Warden Snider requests the Court to quash the summons and complaint served on him on July 16, 2019 for insufficient service of service under [Fed. R. Civ. P. 12\(b\)\(5\)](#). (*Id.*). In support, Warden Snider attaches the summons ([Doc. 12-1](#)) and his sworn affidavit ([Doc. 12-2](#)). Plaintiff elected not to file a response and the time has expired. M.D. Fla. R. 3.01(b).

The Court may order service of process quashed due to service being made upon an improper person, *inter alia*. [Fed. R. Civ. P. 12\(b\)\(5\)](#). The Court properly can consider extrinsic materials, including an affidavit, to support a motion to quash. See [Soos v. Niagara Cty.](#), 195 F. Supp. 3d 458, 463 (W.D. N.Y. 2016); [Torres v. Gaines](#), 130 F. Supp. 3d 630, 634-35 (D. Conn. 2015).

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

Plaintiff filed a civil rights complaint ([Doc. 3](#)) in Florida's Twentieth Judicial Circuit Court, which was removed to this Court on July 29, 2019 ([Doc. 1](#)). The Complaint alleges civil rights violation and pendent state law negligence claims stemming from events that occurred between October 1-4, 2018 at Charlotte Correctional Institution and names as t Defendants: "K. Williams," "J. Dawson," "Warden at CCI" and "Inspector at CCI." ([Doc. 3 at ¶¶ 5-8](#)). Derek Snider attests he was served with a copy of the complaint and summons addressed to "Warden at Charlotte Correctional Institution" on July 16, 2019 ([Doc. 12-2, ¶3](#); [Doc. 12-1](#)). Derek Snider further attests he was not the Warden at Charlotte Correctional Institution when the incidents complained of in Plaintiff's complaint occurred and did not became Warden until November 2019. ([Doc. 12-2, ¶¶ 2, 4](#)). "Upon a showing of insufficient service of process, [Fed. R. Civ .P. 12\(b\)](#) (5) provides district courts with the authority to either dismiss the complaint or to quash the service and require the plaintiff to re-attempt service of process." [Smith v. Conner, No. 8:12-CV-52-T-30AEP, 2013 WL 268685, at *2 \(M.D. Fla. Jan. 24, 2013\)](#)(internal quotations and citations omitted). Because Derek Snider was not the Warden at the time complained of in the complaint, the Court finds service of process was made upon an improper person.

Accordingly, it is now

ORDERED:

1. Warden Derek Snider Motion to quash Service ([Doc. 12](#)) is **GRANTED**.
2. Plaintiff shall be permitted to re-attempt service of process on the individual who was Warden at Charlotte Correctional Institution at the time of the incidents complained of in the complaint.

3. Within **twenty (20) days** from the date of this order, **Plaintiff** shall complete the service with the correct name of the Warden at Charlotte Correctional Institution so service may be reattempted upon the correct defendant.

4. The Clerk shall provide Plaintiff with the necessary service forms with this Order.

DONE and **ORDERED** in Fort Myers, Florida this 18th day of November, 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record